

Statement on the record

**Mechanical Contractors Association of Colorado**

to the

**House Committee on Veterans' Affairs  
Subcommittee on Oversight & Investigations**

Committee on Veterans' Affairs, U.S. House of Representatives  
For the field hearing on

**“Construction Conundrums: A Review of Continued  
Delays and Cost Overruns at the Replacement Aurora  
Colorado VAMC”**

MCA Colorado and the Mechanical Contractors Association of America recommends a much more in-depth technical analysis of VA construction program prime contractor and subcontractor selection reforms to improve budget and schedule performance. Similarly MCA CO and MCAA recommend that the provisions of H.R. 3593 be amended to include reforms to the prime contractor and subcontractors selection procedures.

April 22, 2014

Old Supreme Court Chambers  
State Capitol Building  
Room 200  
200 East Colfax Avenue  
Denver, CO 80203

*Mechanical Contractors Association*



The Mechanical Contractors Association of Colorado

1114 West 7<sup>th</sup> Avenue ▪ Suite 250 ▪ Denver, Colorado 80204 ▪ (303) 757-3956 ▪ (303) 757-4313 – fax

Good morning Congressman Coffman and members of the committee. My name is Dave Davia, and I am the Executive Vice President and Chief Executive Officer of the Mechanical Contractors Association of Colorado (MCA of Colorado). ***We propose to the Committee a more in-depth technical analysis of VA's Construction Program and Prime Contractor and Subcontractor Selection reform be considered which we contend would improve budget and schedule performance.***

The MCA of Colorado is a trade association affiliated with the Colorado Association of Mechanical & Plumbing Contractors. We operate four different and unique trade associations that represent the heating, air conditioning, refrigeration, plumbing, piping, and mechanical service industry in Colorado. Collectively we represent 180 member firms, employing 6,000 to 7,000 workers in Colorado. The MCA of Colorado is a chapter and affiliate of Mechanical Contractors Association of America that serves the needs of more than 2,500 member firms in the US and Canada. MCA Colorado member firms operate in the public and private sector, and direct federal construction projects are a big part of the market for many of the MCA of Colorado firms. As you all are aware Colorado is home to many federal facilities like NCAR, UCAR, NOAA, JILA, NIST, NREL, and approximately 20 others, not to mention half dozen military installations in Colorado. Suffice it to say, MCA of Colorado member firms are familiar with and experienced in working with the federal government and its varied contracting practices.

MCA Colorado members operate as both prime contractors, first tier and even lower tier subcontractors on various direct federal projects. By virtue of this, our view of direct federal procurement issues at the VA and other civilian and defense agencies is well rounded – and not partisan from any single industry biased market perspective.

Our views are responsive to all industry market sectors, not just those of general contractors or construction managers, which is a minority perspective in any event. Specialty construction firms, such as mechanical, electrical, sheet metal, and other specialty trades are the preponderance of the industry judged by any measure. For example, specialty firms comprise some 64% of industry employment in the building sector of the industry, according to Bureau of Labor Statistics data. In the heavy industrial sector, general contractors are more apt to employ direct labor rather than subcontract to specialty skilled firms. Moreover, building industry specialty firms put in place the vast majority of dollar volume of work on building projects of significant scope, such as VA facilities. Increasingly, construction managers and general contractors are subcontracting out ever greater dollar amounts of sophisticated building projects. In most cases, non-performing construction managers/general contractors sub out 70% or more of every project.

In balance and fairness, Chairman Coffman, our first request of the committee is to take the views of the performing subcontractors in proper balance with the views of the minority of non-performing prime contractors. Too often, direct federal procurement policy forums overweigh the views of the prime contractors and construction managers than the specialty firms that install the majority of the project. Chairman Coffman, it is our sincere request and hope MCA Colorado can count on your continued leadership on this committee, and with the Contracting Subcommittee of the House

Small Business Committee, to correct a longstanding and harmful policy bias that stems from greater political weight in policy forums – not unbiased analysis of project administration practices.

MCA Colorado supports the mission of the Department of Veterans Affairs. In fact, many MCA Colorado company principals are veterans themselves. They employ veterans in their workforces, routinely, and as a matter of government mandate, under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and related statutes and regulations (78 Federal Register 58614, Sept. 24, 2013; effective March 24, 2014). MCA Colorado also is a key supporter of the leading veteran recruiting and training programs in the construction industry, the Building and Construction Trades Department's Helmets-to-Hardhats veteran recruiting program into industry apprenticeship programs, and the United Association Veteran in Piping (UA VIP) accelerated training program for military personnel for jobs in the heavy industrial welding and building equipment technician service occupations. The UA VIP program provides transitioning military personnel with on-base training, referral for jobs nationwide and advanced placement in UA and MCAA apprenticeship programs nationwide. The UA VIP program is sponsored by the United Association of Plumbers and Pipefitters (UA) and the mechanical construction firms participating in the jointly administered International Training Fund (ITF). MCA Colorado firms are directly participating in the UA VIP program currently in place at Fort Carson in Colorado. Recently the second 16-week training program commenced with attendees due to graduate in July 2014, many of which we hope will remain in Colorado and work for our Colorado contractors.

In addition, the VA is a large client firm for our industry in Colorado for mechanical contracting firms across the country. As local businesses, in many cases small businesses, as veterans and family members of veterans, and as taxpayers, we all have a direct stake in a high performing VA construction program. It is critical to the VA's mission to serve its beneficiaries and for the welfare of taxpayers as a whole.

With these overlapping and intersecting public interests in mind we offer the following comments as constructive suggestions for improvement of the VA construction program. MCA Colorado is well aware of recent General Accountability Office (GAO) reports suggesting a significant need for improvement in VA major construction project planning and contract administration practices. The report documents some significant problems with some VA major facility projects (primarily those in Denver, CO, Orlando, FL, New Orleans, LA and Las Vegas NV). Many of the problems the GAO identifies stem from issues with acquisition planning, major equipment purchasing, conflicting roles and duties of VA construction contract administration staffing, and the consequent delays and cost overruns because of the volume and delays in change order processing. The report also catalogs a significant number of recent past VA major facility projects that were completed more successfully. (***VA Construction: Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical Facility Projects***, GAO-13-302, April 2013).

In perspective, this recent GAO report is one in a rather long line of GAO assessments analyzing problems in project acquisition, planning and contract administration at the VA going back many years, some even to the early 1980's where the bureaucratic misalignment of planning and project execution

between the VA's department of medicine and office of construction were analyzed as the basic problems in many projects, with delays and cost overruns stemming from excessive change orders.

Over time, MCA Colorado is aware some remedial proposals have centered on improving the VA's acquisition and planning function, better coordination with the departments of medicine in facility planning and equipment purchasing, and overall improvement in the construction department's post-award contract administration functions. Also MCA Colorado is aware as some have suggested, even more fundamentally, having the VA outsource its project construction function to the U.S. Army Corps of Engineers (USACE) is generally regarded as more effective in post-award construction project contract administration. Without backing the specifics of that recommendation, MCA Colorado would first focus remedial discussion on the need to improve project planning and acquisition within the VA; as it is not clear how the USACE could not take responsibility for that function.

Moreover, we would point this committee to a more in-depth review of the VA construction program contracting practices overall. For example, the GAO report aforementioned shows the VA still relies on traditional Design-Bid-Build (DBB) low-bid prime contractor selection procedures (Federal Acquisitions Regulation Part 14 low-bid selection procedures) far more heavily than might be expected given other federal agency procurement trends. We submit a comparative analysis with other large Federal agency construction programs (i.e. the USACE, the Naval Facilities Engineering Command (NAVFAC), and the General Services Administration (GSA)) would show the VA uses low-bid procedures to a much greater degree than either the USACE, NAVFAC or GSA. A comparative analysis might explore the reasons and effects of those various contracting procedure choices on project outcomes.

To review the VA contractor selection procedures, we looked at the GAO report cited above. **Appendix II: Changes in Cost for Department of Veterans Affairs Major Facility Projects** lists 50 major projects ongoing in 2012 (project of \$10 million or more). The list shows 23 projects experiencing \$3 billion in cost overruns or 77% above the estimated project cost; the list shows 21 projects holding firm to the original cost estimate; and, five projects that came in \$72 million under the original estimate, or a 17% improvement over original estimates.

The appendix referred to above also shows the project type, which refers to the prime contract award procedure – DBB (design-bid-build, traditional low-bid, sealed bid selection under FAR Part 14 procedures). Fully 21 of the 23 projects with cost overruns were awarded under low-bid selection procedures. The remaining two of the 23 cost overrun projects were awarded under IDC (Integrated Design and Construction contracts – a negotiated contract selection procedure under FAR PART 15 competitive negotiation) selection procedures. Of the 21 projects experiencing no cost overruns, 17 were awarded under low-bid design-bid-build selection; two were awarded under design-build competitive negotiations procedures; one was awarded as an Integrated Design and Construction project; and one other was a hybrid design-bid-build/design build procurement.

The same basic contractor selection procedure breakdown follows in **Appendix III, Changes in Schedule for Department of Veterans Affairs Major Medical Facility Projects**. The report shows 24 major projects with schedule overruns. Among these, fully 18 were DBB low-bid awards, three were

design-build negotiated selection projects; and three were integrated design and construction contract awards. Among the 26 projects reporting no schedule delays, fully 24 were low-bid awards, only one was design-build competitive negotiations, and the last was a hybrid DB/DBB award.

Mr. Chairman, MCA Colorado submits this pattern of VA contractor selection procedures warrants further in-depth analysis. To that end, MCA Colorado notes last November, Missouri Senator Claire McCaskill, Chairman of the Subcommittee of Financial and Contracting Oversight of the Senate Committee on Homeland Security and Government Affairs sent a request to GAO to reopen their study referenced above to examine the extent to which the VA's prime contractor and subcontractor selection procedures may be contributing to unsuccessful project outcomes. To date, that GAO study has not been released. Mr. Chairman, MCA Colorado, and our national association, the Mechanical Contractors Association of America (MCAA) would be eager to work with you on further analysis should you or the committee warrant it necessary.

We note Mr. Chairman you have taken the lead in examining another GAO report of VA contracting practices pertaining to the VA's inefficient use of internet reverse auction procurement procedures for goods and services (***Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings***, GAO-14-108, December 2013). We also note, Mr. Chairman, your colleagues Congressman Richard Hanna and Congresswoman Grace Meng on the Contracting Subcommittee of the House Small Business Committee have introduced a bill, ***H.R. 2751, the Common Sense Construction Contracting Act of 2014***, which would ban the use of internet reverse auction for direct federal construction prime contractor selection. This measure is in line with the long-standing industry consensus, backed by the USACE, and virtually all industry groups, that the use of internet reverse auctions for low-bid prime contractor bid shopping auctions for selecting prime contractors is against the public interest for prudent and successful bidding procedures and sound project delivery outcomes. We commend that bill to your leadership, and hopefully your co-sponsorship.

Along those very same lines, we hope to rely on your continued support this year and next to expand that measure by adding a parallel measure banning bid shopping at the subcontractor selection level as well. We specifically request you seek to append ***H.R. 1942, the Construction Quality Assurance Act of 2013*** to any similar measure as it moves through the House Small Business or Oversight and Government Reform Committees. The federal policy interests sought to be achieved by both measures – H.R. 2751 and H.R. 1942 together – are identical, sound, prudent, and fairly serve both prime contractor and subcontractor selection procedures to benefit agency construction programs, their overall mission, and the taxpayers as a whole. Again, H.R. 1942 would only require transparent subcontractor selections as low-bidders or offerors in either low-bid or low-price/technically acceptable (LPTA) negotiated selection procedures would have to list the major subcontractors used in compiling their price proposal and award to those subcontractors after prime contract award unless there is good cause for a substitution granted by the contracting officer.

As with the internet reverse auction measure, virtually the entire construction industry attests in the ***Guidelines for a Successful Construction Project*** that post-award subcontractor bid shopping by the prime contractor who is the successful offeror, which would be barred under H.R. 1942, is an extremely

harmful practice that impairs successful project performance and the taxpayers' interest in on-time, on-budget projects. The remedy H.R 1942 seeks is to prevent the practice of sub bid shopping by the successful prime contractor, who after being awarded the prime contract, subsequently shops the subcontractors' bids after initial negotiations and submission in the price proposal, and takes the subsequent cost savings for itself, without benefit to the project. As a consequence the agency suffers all the added risk of this post-award price chiseling. The time for open and transparent competition is pre-award, not after.

As stated at the outset, Mr. Chairman, MCA Colorado looks to your continued leadership, and requests this Committee contemplate authorizing a more in-depth technical analysis of the VA's Construction Program and Prime Contractor and Subcontractor Selection reforms be considered which we believe would improve budget and schedule performance. We believe these are key and well-rounded procurement reforms to make sure the taxpayer interest in balanced and fair overall procurement reforms aren't subordinated to the self-interest of any one particular private industry interest.

In conclusion MCA Colorado, and MCAA, position in favor of amending H.R. 3593 to include the terms of the Quality Construction Act of 2013, H.R. 1492. H.R. 1942 is supported by a wide array of construction industry groups in addition to MCAA representing firms that perform direct federal public projects as both prime contractors and subcontractors. Furthermore the MCA of Colorado and the Mechanical Contractors Association of America recommends the Committee continue its analysis with an in-depth examination of VA procurement policies, including prime contractor and subcontractor selection procedures to improve across the board on-time schedule and budget performance.

Thank you, Mr. Chairman, for the opportunity to testify on these important issues today. I will address any questions you may have.

#####